

Default Judgment Motions and the Servicemembers Civil Relief Act

In pursuing default judgment in an adversary proceeding against an individual, the motion for default judgment must comply with the Soldiers' and Sailors' Civil Relief Act of 1940, as amended by the Servicemembers Civil Relief Act in 2003.

Where an individual defendant has not made an appearance, a plaintiff shall file an affidavit stating whether or not the defendant is in military service and "showing necessary facts to support the affidavit[.]" 50 App. U.S.C. § 521(b)(1)(A). Alternatively, if the Plaintiff is unable to make such a determination, the affidavit shall so indicate. 50 App. U.S.C. § 521(b)(1)(B). "Military service" is defined in 50 App. U.S.C. § 511(2) and includes active duty, including the National Guard under defined circumstances, and when "a servicemember is absent from duty on account of sickness, wounds, leave or other lawful cause."

To the extent the Plaintiff lacks independent knowledge concerning whether the Defendant is in military service, information is available on the Department of Defense website at <https://www.dmdc.osd.mil/scra/owa/home>.